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IN UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF EMERICA,

Plaintiff,

vs.

ERNESTO MADRIGAL,

Defendant.

No. CR 21-0182 JD

DEFENDANT'S SENTENCING  
MEMORANDUM

On May 9, 2022, Ernesto Madrigal pled guilty to Count 1 of the indictment: Conspiracy to Distribute and Posses with Intent to Distribute Methamphetamine, a violation of 21 U.S.C. §§846, 841(a)(1) and (b)(1)(C). Mr. Madrigal pled guilty pursuant Rule 11(c)(1)(A) and (B).

The defendant agrees with the government that the Total Offense Level is 27. And the defendant further agrees that he falls under Criminal History Category I.

Under 18 USC 3553(a), the Court "shall impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes [of the]... need for the sentence imposed:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.
- (B) to afford adequate deterrence to criminal conduct.
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with the needed educational or vocational training,

(D) to provide the defendant with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. §3553(a)(2)(A)-(D). In determining the minimally sufficient sentence, courts consider these purposes, as well as “the nature and circumstances of the offense and the history and characteristics of the defendant,” (§3553(a)(1), “the kinds of sentences available” (§3553(a)(3)), “the need to avoid unwanted sentence disparities” (§3553(a)(6)), and “the need to provide restitution” (§ 3553(a)(7)).

The court must also consider the applicable guideline ranges, but those guidelines are advisory under *United States v. Booker*, 543 U.S. 220 (2005). 18 U.S.C. §3553(a)(4). And the sentencing guidelines are not merely advisory, but also are to be given no more weight than any other factor under Section 3553. *Kimbrough v. United States*, 552 U.S. 85 (2007). In short, the sentencing court retains significant discretion to “tailor the sentence in light of other statutory concerns as well.” *Id.* The district court shall not presume that a with-in guideline sentence is reasonable. *Gall v. United States*, 552 U.S. 38 at 50 (2007).

Next, this Court must consider the pertinent §3553(a) factors, and decide whether these factors call for a sentence outside the Guidelines, *Gall* 552, 49-50. The sentencing judge is required “to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *United States v. Tadio*, 663 F.3<sup>rd</sup> 1042, 1059 (9<sup>th</sup> Cir. 2011) citing *Koon v. United States*, 518 U.S. 81, 98 (1996). This Court may impose an out-of-guidelines sentence based on a combination of mitigating factors, including those which the advisory guidelines previously prohibited or discourage by the Guidelines. The court may consider all “information concerning the background, character, and conduct of [the defendant]... for the purposes of imposing an appropriate sentence.” 18 U.S.C. §3661; *Rita v. United States*, 551 U.S. 338, 364-65 (2007), (sentencing courts may consider all factors including age, education, mental or emotional condition, medical condition, employment history, lack of guidance as a youth, family ties, or charitable service.) Sentencing courts need not and may not require “‘extraordinary’ circumstance



1 to justify a sentence outside the Guidelines and no courts may use proportional formula 'for  
2 determining the strength of the justifications required for specific sentence.' *Gall* 552 U.S. at 41.  
3 This Court need only find that due to the pertinent factors, the appropriate sentence falls outside  
4 the guideline range. See *Rita*, 551 U.S. at 351; *Nelson v. United States*, 555 U.S. 350, 351 (2009).

5  
6 A SENTENCE BELOW THE GUIDELINE RANGE IS CONSISTENT WITH THE POLICES  
7 STATED THEREIN

8 Defendant is a United States citizen. He was born in Los Angeles, CA on June 8, 1994. He  
9 is now 28 years old. PSR, ¶ 44. He has two adult sisters and a young brother, who is disabled, due  
10 to a spinal condition. PSR, ¶ 45. Mr. Madrigal indicates that he had a very difficult upbringing as  
11 his family was very poor and basic needs such as food and clothing were not always met. The  
12 family received government assistance. Food was not always available and therefore he would rely  
13 on a hot meal at school as a significant source of daily food. PSR, ¶ 46.

14 He informs that on his 9<sup>th</sup> birthday, the family learned that his 2 year-old cousin had died  
15 by drowning. PSR, ¶ 47. And when he was 10 years old, his father was arrested and sent to prison  
16 for a drug offense. He stated, 'my dad going to prison was one of the hardest things that happened  
17 to me. I didn't know if he would ever come back home. I had a strong relationship with my dad,  
18 he was my best friend.' His father was released about 7 years later and deported to Mexico. His  
19 parents divorced when he was 12 years old. PSR, ¶ 48. This appeared to have caused him lasting  
20 trauma in his life.

21 He indicates he enjoyed playing sports as a youth. However, his parents never went to  
22 watch him play sports, as his mom was busy working to try to provide for the family and his father  
23 was incarcerated. Playing sports gave him an escape from the struggles he experienced at home.  
24 PSR, ¶ 49. He further indicates that him and his siblings were often home alone with out an adult.  
25 PSR, ¶ 50.

26 Mr. Madrigal indicates that he started using drugs, i.e. marijuana, cocaine, and  
27 methamphetamine, at the early age of 11 years old. He has continued to use these drugs  
28 throughout his adult life. He indicates he has never participated in a substance abuse program.

1 He would welcome such a program to try and get clean and sober, and stop using drugs. PSR, ¶¶  
2 60-63. He has clearly been using these substances for a prolonged period of time.

3 He attended 3 different high schools and dropped out of high school in the 12<sup>th</sup> grade and  
4 does not have a GED diploma. PSR, ¶¶ 64, 65.

5 He reports have gainful employment in the recent past up to the time when he was  
6 remanded in court after pleading guilty in May of 2022, His most recent job was at Fiber Care  
7 Bathtubs, and was a part pusher, earning \$17 an hour. PSR, ¶ 66. He as been gainfully employed  
8 at different jobs since 2015, earning anywhere from \$13.50 to \$34.00 per hour. PSR, ¶¶ 66-70.

9 Mr. Madrigal reports he has experienced mental heath issues in the last two years,  
10 including having fainted when he was arrested in the present case. He further stated that he  
11 participated in mental health counseling sessions while he was on pretrial release. He found these  
12 sessions helpful. PSR¶¶ 57, 58.

13 The probation officer who interviewed Mr. Madrigal concludes that, having administered  
14 an Adverse Childhood Experiences (ACE) test, Mr. Madrigal is at risk of a major chronic health,  
15 mental health, economic health, and social health issues due to the childhood trauma experienced.  
16 The defendant was asked 10 questions that evaluates traumatic events involving abuse, neglect,  
17 household dysfunction that occurs during childhood. He answered 4 out of 10 questions in the  
18 affirmative. PSR, ¶ 59.

19 Mr. Madrigal has had a very difficult childhood. Experiencing an accidental death of a 2  
20 year-old cousin, the scarce resources the family had that made it difficult to meet the most basic  
21 needs when he was a child, the incarceration of his father due a drug crime, the divorce of his  
22 parents. Additionally, he started using different drugs at the tender age of 11 years old.

23 Mr. Madrigal has no prior criminal record. His current crime did not involve a large level  
24 conspiracy. He has a strong family support system. He has shown that he can get and keep a job.  
25 He is still a young man, and understands that selling drugs leads to destruction of lives, including  
26 users, and their families, as well as his own life.

27 Therefore, Mr. Madrigal requests:

- 28 1. A downward variance; a sentence of 24 months in prison.

2. A recommendation that he be admitted to the BOP Residential Drug and Alcohol Program (RDAP), or a different drug treatment program
3. A recommendation to the Bureau of Prisons that he be designated to serve his sentence at a BOP facility as close as possible to the San Francisco Bay Area.

Dated: January 16, 2023

Respectfully submitted,

/s/Ruben Munoz  
Ruben Munoz,  
Attorney for Ernesto Madrigal



To whom it may concern,

Your honor it is with great enthusiasm that I'm writing this letter on behalf of Mr. Ernesto Madrigal, the defendant. I'm Stephanie Arceo resident of East vale, California. Mr.Madrigal is my cousin and uncle "kitty" to my twin girls. I had the honor to grow a strong bond with Ernesto as well as my daughters. He has always been so sweet loving and caring. My mom loves this kid since he was a baby. I'm older than him by 1 year so that shows why we've been so very close to each other. We have had created such a beautiful cousin and uncle bond.

Mr. Ernesto Madrigal has been a very private person when it came to himself. A very good kid to us and just everyone that has met him. Growing up he always knew about sports literally about everything but he's definitely a soccer guy. When he was little he played soccer. The love he has for soccer is crazy. We use to always love going over to his house because we knew it was a soccer game. Good food , great company and enjoying Tigre run and play. One of the very few that has played a sport growing up and we sure did love going to those event. As of now, he's a lot older but now he watches them didn't miss a game always rooting for the Chivas. Although they haven't been the greatest still a number 1 fan. His soccer and his xbox will always be his number one love.

He has been one of the very few I've trusted with my daughters. He would never fail to watch my girls when I need that extra help from someone. Ernesto was the first one I would call when it came to someone watching my girls not only because of the trust but because of my girls always choosing him to watch them. He has always gave me that trust and I appreciate him for always coming and offering his help. Not only me but if it were to be somebody else he wouldn't hesitate say "Yes" to myself and my cousins. All the kids love their uncle Ernie! My daughters will always appreciate their uncle Kitty.

As of now it has been very different without him being home. My girls question me all the time now and it has been very hard to answer them that question. Not only hard to answer but hard to believe. The fact that I don't see my cousin on his laptop going through his day playing on his Xbox right after work does make you sad. He's such a great kid and will always be one. He'll always hold a special part in our hearts. I know the day he's out he'll be the best version of himself not that he's not but he'll come back stronger and more amazing then what he really is! I hope this letter helped you a little to understand the human being Ernesto Madrigal is to myself and my girls. Although, I know this short brief letter doesn't describe him completely I still thank you for taking the time on reading this.

Sincerely,

Stephanie Arceo

Hi ,my name is Jazmin madrigal I am Ernesto's younger sister. It's been really hard without having him here home I miss him very much, i miss his hugs ,his jokes I miss all the little things I'm not going to lie it's been a bit difficult not having him around but I know my brother will pull through this we will all be waiting for him with open arms. My brother and I are a few years apart I'm 20 he's 28 but here are some things I can say about my brother ,the first thing is that he is the most lovable and caring person I have ever met , i love that he's a man and is not scared to show emotions and his true feelings oh and he is definitely all the nieces and nephews favorite uncle "Tio kitty" as the kids would say he is amazing with children all the kids love him ,he is very protective over his family he will always put anyone else before himself . I know my brother had a rough patch growing up we didn't have much of a father figure in our life growing up so he took the role of being the man of the house it was very hard on him but I'm proud of him. I know he's not perfect, no one is but he was getting his life together he would help my mom and I in our food truck then he got a stable job and was working 6 days a week. I'm hoping on seeing him soon and giving him a big hug .

To whom it may concern,

Ernesto has played a huge part in my life and has helped shape me into the man I am today. I wouldn't be where I am at if it wasn't for him. Some of my favorite childhood memories were when I would go visit him in Los Angeles about 6 hours from here since that's where he resided with some of my family. He always made me laugh and have the best times. Once he moved out here to Richmond with my family that is where we got even closer. I always considered him one of my close cousins however, after he moved to my house, I started looking at him as another older brother for me to look up too. Although I am 9 years younger than him, he never looked down on me or treated me differently. He always made time for me and would even go watch my soccer games, which not much of my family would do, so the fact that he was always a person I could rely on meant a lot to me. We had a musical group which included my two older brothers and I, family with a similar passion for music. Playing at events like birthday parties and baptisms; practicing weekly where he'd teach me how to better my vocals so I could become lead singer and much more. I am aware of the mistakes he has committed but I don't have any doubt that with an opportunity to come out and better his life he will take advantage of it. I am a full-time electrician and have opportunities saved for him so that I can help him get back on his feet after everything he's been through these past months. He was always there for me and has supported me, helped me out during my hard times and stuck through; I am willing to do the same for him because that is the bond we have built throughout the years.

Sincerely,  
Jose Barrera





Ruben Munoz &lt;rtmunozlaw@gmail.com&gt;

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**Ernesto Madrigal letter**

1 message

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**karina madrigal** <karinam0914@gmail.com>  
To: Rtmunozlaw@gmail.com

Mon, Aug 15, 2022 at 8:53 PM

**To whom it may concern,**

My name is Karina Madrigal and I am Ernesto Madrigal's oldest sibling. I am here writing this letter to explain how much he is missed back at home. Ernesto is a big part of our lives; he is such a pure and sincere person. He is really missed not only by family but as well as his close friends. He is the cool uncle the person all his nieces and nephews look for and is asked for all the time. Not only was he always up to something good with the kids but also will plan fun days and activities with them. I have 3 children, 2 boys and a girl that ask for him on a daily basis, as my response is he will be back home soon and be able to spend time with him. We grew up together I can say I have the best memories with him. Was always behind me playing and sometimes even bugging but it's ok what are siblings for. There's not one day when I think that he will be back home soon he is really loved and missed by all of us. Ernesto will always help out, I'm a single mother and anytime I will be stuck in anything or needed a favor he was there, picking up the kids from school treating them to dinner, taking them over to his house to spend time with him. I can say he is like their second dad to my children. All we are asking for it's to take all of this into consideration and hopefully have him back home as soon as possible.

Thank you  
Karina Madrigal